

## BRAND &amp; FRULLA

A PROFESSIONAL CORPORATION

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April 7, 2003

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FEDERAL EXPRESS

Manoj Shivlani, Manager  
Center for Independent Experts  
Rosenstiel School of Marine and Atmospheric Science  
University of Miami  
4600 Rickenbacker Causeway  
Miami, FL 33149

Re: Potential Issues regarding CIE Reviewer Independence

Dear Director Shivlani:

I am writing to you on behalf of the Associated Fisheries of Maine and the Trawlers Survival Fund, two associations comprised of New England groundfish industry participants that we represent in litigation and within the NOAA Fisheries management system. These groups have worked hard to develop rational, science-based management solutions (by, for example, working with research institutions and assessment experts) for the groundfish fishery. They also confront extensive and well-funded legal and regulatory challenges to their continued economic viability initiated by the environmental community. With that background, it is hoped that you can appreciate the gravity of the matter about which we write.

It has come to our attention that there may have been a material failure to abide by National Oceanic and Atmospheric Administration ("NOAA")/Center for Independent Experts conflict of interest rules with respect to the retention of an "independent" expert for the recent groundfish peer review commissioned under auspices of the NOAA Fisheries, the Northeast Fisheries Science Center, and the New England Fisheries Management Council.

We are not certain about the appropriate remedy, but we believe the matter is important enough to call to your attention, if for no other reason than to ensure the situation never recurs. We are very troubled that an "independent" review may have been commissioned and its results disseminated—all in order to deal with absolutely critical issues facing the New England Council, NOAA Fisheries, and, of course, the northeastern and mid-Atlantic fishing communities who face bankrupting new

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restrictions—if all reviewers do not meet the standards of independence undergirding the review process.

More specifically, we have learned that Dr. Murdoch McAllister, one of the groundfish peer reviewers under contract with your organization to conduct this peer review, may not, in fact, have met your standards for disinterestedness. The CIE requires independent reviewers to certify that, among other things, they have not "received in the past (1-2 years) substantial funds from industry or environmental groups with vested interests in resources for which NMFS has stewardship responsibilities."

We understand that Dr. McAllister has, however, worked in the past 1-2 years (and in prior years) on behalf of the environmental community on matters relating to Atlantic bluefin tunas (ABT) and Atlantic sharks, which are both under NOAA Fisheries' stewardship. As for ABT, we understand that Dr. McAllister participated on the environmental community's behalf on U.S. scientific delegations to the International Convention for the Conservation of Atlantic Tunas. For sharks, he worked with Drs. Elizabeth Babcock and Ellen Pikitch of the Wildlife Conservation Society in the development of papers submitted to the NOAA Fisheries 2002 Shark Evaluation Workshop, and Dr. McAllister then participated in that workshop. For her part, Dr. Pikitch was the remedy phase expert for the Plaintiffs Conservation Law Foundation, *et al.*, in the groundfish case before Judge Kessler of the Federal District Court for the District of Columbia. In fact, Dr. McAllister has recently been prolific in submitting papers on sharks and Bayesian modeling approaches with Drs. Babcock, Pikitch, or both. Certain of these papers were funded by the Pew and/or Packard Foundations, both of which have copiously funded environmental groups that are committed adversaries of commercial fishermen. We attach three examples of these papers.<sup>1</sup> Dr. McAllister undertook similar activities in connection with the NOAA Fisheries' 1998 large coastal shark assessment process.

If our concerns are in fact well-founded, we would deeply appreciate it if CIE would make sure that there is a better system of accounting and responsibility in place so that "independence" can mean something in the future. To the extent that an impermissible breach of independence standards has occurred, it should be publicly acknowledged so that decision-makers can gauge the scientific advice they received. And if we are wrong on the facts with respect to Dr. McAllister we would be relieved to know that. We have made a great deal of progress in the last few years of working within the management system so that talented fishermen, advocates, and others can

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<sup>1</sup> For convenience, the following citations to the pages in these attached documents recognizing the funding sources are provided. Document captioned SB-IV-27 see page 10; Document SB-02-1, see page 16; and Document SB-02-41, see page 1888.

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really be a part of the structure that controls fishermen's lives; and we are committed to continuing this important goal.

Thank you for your attention to our concerns. We are quite aware that the CIE is dependant upon a solid and trustworthy relationship with NOAA, and from our perspective, it is vital that *truly* independent experts remain available, free from dependence on NOAA Fisheries, the environmental community, and, indeed, the fishing industry. We appreciate the challenges you face in the screening process, and hope that this letter serves to heighten your vigilance and keep the process as transparent as possible. We trust you will receive this letter with that in mind.

Sincerely,



David E. Frulla

DEF:mlc

### Attachments

cc: Assistant Administrator William Hogarth, NOAA Fisheries  
Director John Boreman, NEFSC  
Chairman Tom Hill, NEFMC  
Director Paul Howard, NEFMC